

CALIFORNIA NURSES ASSOCIATION/
NATIONAL NURSES ORGANIZING
COMMITTEE (CNA/NNOC)
LEGAL DEPARTMENT
Micah Berul, In-House Legal Counsel
155 Grand Ave.
Oakland, CA 94612
Telephone (510) 273-2292
Fax (510) 663-4822
Counsel for Respondent CNA/NNOC

I. INTRODUCTION

Respondent, California Nurses Association (the Union), respectfully submits this opposition to Charging Party, Henry Mayo Newhall Memorial Hospital's (the Hospital's) motion for a final decision and request for further clarification in NLRB Case No. 31-CB-012913. Because the Board has already issued a final order in this case, the Hospital's motion should be denied.

II. PROCEDURAL HISTORY

On July 9, 2012, Administrative Law Judge Mary Miller Cracraft issued a decision and recommended order, finding that the Union had violated Section 8(b)(3) and 8(b)(1)(A) of the Act. On July 2, 2013, the Board issued an Order, reported at 359 NLRB No. 150, finding that the Union violated Section 8(b)(3), but not Section 8(b)(1)(A). On July 29, 2013, the Union filed a motion for reconsideration with regard to the language in the Order that required the Union to "cease and desist from '[i]n any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.'" 359 NLRB No. 150, slip op. at 4.

On January 8, 2014, the Board, in its Order reported at 360 NLRB No. 21, granted the Union's July 29, 2013 motion and modified the Order to remove the "like or related manner" language from the Order. On June 26, 2014, the Supreme Court issued its decision in *NLRB v. Noel Canning, et al.*, 134 S.Ct. 2550 (2014), and on the following day, June 27, 2014, the Board issued an Order setting aside the Order reported at 359 NLRB No. 150.

III. ARGUMENT

The Board Order reported at 360 NLRB No. 21 is the final order in this case. It was issued by a three-member panel that comported with the requirements of the Supreme Court's holding in *Noel Canning, supra*. The Board Order reported at 360 NLRB No. 21 also explains

that the Union did not violate Section 8(b)(1)(A). In this regard the Order provides that “the Board’s general injunctive language for 8(b)(1)(A) violations – ordering a party to cease and desist from ‘[i]n any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act’ – is not appropriate where a party has violated only Section 8(b)(3).” 360 NLRB No. 21, slip op. at 1. As the Board’s Order reported at 360 NLRB No. 21 holds that the Union violated Section 8(b)(3) *only*, a final order issued in this matter.

Section 10(f) of the Act provides that:

Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any United States court of appeals in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside.

The Hospital may petition a circuit court, per the requirements of Section 10(f), for review of the final order of the Board, which is reported at 360 NLRB No. 21 if it is of the view that it was aggrieved by the final order issued by the Board in this case. The Hospital, however, should not be granted a second bite at the apple for another Board Order.

IV. CONCLUSION

For the above reasons, the Union respectfully requests that the Board deny the Hospital’s motion.

DATED: December 20, 2017

Respectfully submitted,

CALIFORNIA NURSES ASSOCIATION/
NATIONAL NURSES ORGANIZING COMMITTEE
(CNA/NNOC)



Micah Berul, In-House Counsel
Attorney for Respondent CNA/NNOC

PROOF OF SERVICE

The undersigned hereby declares under penalty of perjury that I am a citizen of the United States, over the age of eighteen years, not a party to the within action and that my business address is 155 Grand Ave., Oakland, California 94612.

On the date below, I served the following documents:

RESPONDENT'S OPPOSITION TO MOTION FOR FINAL DECISION


Via electronic mail as follows:

Nikki Cheaney, Counsel for Acting General Counsel
National Labor Relations Board, Region 31
11150 West Olympic Blvd, Suite 700
Los Angeles, CA 90064-1824
nikki.cheaney@nrlrb.gov

Adam C. Abrahms, Esq.
Christina C. Rentz, Esq.
Epstein Becker Green
1925 Century Park East, Suite 500
Los Angeles, CA 90067-2506
aabrahms@ebglaw.com
crentz@ebglaw.com

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 20, 2017, at Oakland, California.


Jan Baerwald